United Nations A/72/350

General Assembly

Distr.: General
18 August 2017

Original: English

Seventy-second session
Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report prepared by the Special Rapporteur of the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression, David Kaye, submitted in accordance with Human Rights Council resolution 25/2.

* A/72/150.

** The present report was submitted after the deadline in order to reflect the most recent developments.

17-14273 (E) 140917

Please recycle

Report of the Special Rapporteur of the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression

Summary

The United Nations does not have an access-to-information policy that applies to every department and specialized agency; it does not even have ad hoc standards to provide a response to access-to-information requests. For the central global political institution, one that serves the public interest across a range of subject matters, this is intolerable. But the United Nations is not alone. While freedom of information policies have been introduced worldwide, international organizations, with a few specific exceptions, have not followed suit. The present report provides an assessment of the state of access to information with regard to the activities of international organizations. It urges all international organizations, especially the United Nations, to adopt robust freedom of information policies, with specific recommendations to organizations, Member States and civil society.

Contents

		Page
I.	Introduction	3
II.	Freedom of information	4
	A. Purposes underlying the right to freedom of information	4
	B. Legal framework	5
	1. Nature of the right of access to information	5
	2. Narrow restrictions on the right to information	8
	3. Legal framework and international organizations	8
III.	Key elements of an access-to-information policy	10
	A. Access to information in intergovernmental organizations	10
	B. Essential elements of access-to-information policies	12
	1. Open multi-stakeholder adoption process	12
	2. Proactive, clear, searchable and secure disclosure	13
	3. Comprehensive policy with binding rules	13
	4. Clear rules about what information may be withheld	15
	5. Complaint and appeals mechanisms	16
	6. Implementation, review and monitoring	17
	7. Independent whistle-blower protections	18
IV.	Conclusions and recommendations	19

17-14273

I. Introduction

1. The workings of international organizations, including the United Nations, are deeply opaque to most people. Apart from the work of their highest profile bodies, what they do and how they do it is largely hidden from public view. In such an environment, how does information of legitimate interest to the public get disclosed? How does the general public, including citizens, students, journalists, scholars, activists, parliamentarians and even representatives of Member States, keep track of how the United Nations and other intergovernmental organizations operate and how international civil servants comply with their obligations? What policies, if any, direct international officials to share information? What standards do international officials rely upon when deciding whether to withhold information? In general, how do intergovernmental organizations ensure their own compliance with the human rights norm guaranteeing everyone the right to seek and receive information of all kinds, especially information held by public authorities?

2. In his 2016 report detailing the refusal of the United Nations to acknowledge responsibility for the tragic outbreak of cholera in Haiti, the Special Rapporteur on extreme poverty and human rights noted the following:

> "It has been suggested to the Special Rapporteur by several sources that the legal advice originally submitted to the Secretary-General took a rather different approach to these crucial issues [the responsibility of the United Nations for the cholera outbreak] from that which was finally adopted, but this cannot be confirmed since none of the analyses of the Office of Legal Affairs have been made public. If true, however, it might explain why the arguments adduced in order to abdicate responsibility are both peremptory and inadequately justified (A/71/367, para. 33)."

3. There have been similar information-poor situations involving peacekeeping, whistle-blowing, allegations of fraud, personnel decisions and conflicts of interest for which a comprehensive freedom of information policy for the United Nations would have advanced public understanding of and engagement with global issues and reinforced mechanisms for accountability. A lack of transparency and proper access to information, for instance, has arguably played a role in the lack of accountability on the part of peacekeepers accused of sexual abuse.[1]

4. There is evidently no formal process according to which a member of the public, let alone a special rapporteur, may seek such information from the United Nations.[2] As a result, even if an intergovernmental organization has a good case for non-disclosure in a particular situation, that argument is not tested (see ST/SGB/2007/6). To address this point one must ask how are institutional decisions and analyses, and decision makers, to be put to the test when such information is so difficult to obtain? Instead of a formal process that would enable the submission of requests for information, public knowledge of the policies and actions of the United Nations and of other intergovernmental organizations is limited to only what those bodies choose to publish, while external evaluation typically depends on the efforts

[1] See, for example, Azad Essa, "Why do some UN peacekeepers rape?", *Al Jazeera*, 4 August 2017; A/71/99, paras. 250 and 251 (report of an independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic); and Carla Ferstman, "Criminalizing Sexual Exploitation and Abuse by Peacekeepers", Special Report 335, United States Institute of Peace (Washington, D.C., 2013).

[2] It is understood that the Department of Public Information of the Secretariat has created an email address (inquiries2@un.org) to which the public may address inquiries, which are in turn forwarded to relevant offices. This is not, however, a policy, let alone one that has any of the elements described in section III of the present report.

of journalists or researchers who develop access within such organizations. Within the United Nations, and most intergovernmental organizations, there appears to be no obligation on the part of any official source to provide reasons for refusing to disclose information.[3]

5. The present report, which explores freedom of information policies in the context of international organizations, placing specific but not exclusive focus on the United Nations system, is the result of a year's worth of research and investigation, including a call for submissions that generated responses from 16 international organizations and 5 non-governmental actors.[4] Access to information under human rights law, noting the expansion of freedom of information policies adopted by Governments worldwide, is discussed in section II below. The elements necessary for an effective freedom of information policy at the international level are presented in section III, and a series of recommendations for intergovernmental organizations, Member States and non-State participants in international governance are presented in section IV.

II. Freedom of information

A. Purposes underlying the right to freedom of information

6. Where rule of law prevails, Governments and Government officials stay accountable to their citizens through a variety of mechanisms. Too often, however, accountability is a chimera, and nowhere is this more evident than in situations where authorities withhold information from the public. Without freedom to access information[5] of all kinds — in particular when Governments withhold information from the public and its judicial, legislative and media mechanisms — abuses may take place, policies affecting the general welfare may not be tested and improved and overall public engagement and participation diminishes, often by design. By contrast, information-rich environments help promote good decision-making and meaningful public debate, building credibility for public institutions. Even if implementation may not always meet the highest standards, Governments have recognized this fundamental point, at the intersection of good, open government and the human right of access to information, recognizing that the credibility of public authorities depends on their willingness to engage with those who fund their work and elect their key officials — the members of the public.

7. These general points about access to information are hardly controversial today in discussions of governmental power and policy. A majority of Governments around the world have adopted freedom of information laws, with varying degrees

[3] This is so, notwithstanding the fact that the United Nations does have a classification policy that clarifies distinctions between levels of sensitive information, see ST/SGB/2007/6.

[4] Submissions may be found at the mandate's website. Particular thanks are due to the following students at the University of California (Irvine) School of Law, who, with assistance from Professor Ramin Pejan, conducted research in support of this project, especially: Enid Zhou, Katherine Ells, Laurence Liu and Nassim Alisobhani.

[5] The report utilizes phrases such as "freedom of information" and "right of access to information" and "right to information" interchangeably. They refer to the right, under article 19 (2) of the International Covenant on Civil and Political Rights and article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression, including the right to receive information and ideas of all kinds through any media and regardless of frontiers.

of robustness and levels of implementation.[6] But the movement for open government has largely bypassed global institutions — not totally, but so significantly that "access to information" carries very little currency within the centres of international governance. Ask an international official about access to information and one is more likely to hear about websites and archive policy (extremely important information, but not exactly to the point) than the public's ability to gain access to the contemporary workings or failings of or debates within intergovernmental organizations or institutions. This is not to begrudge the work done by intergovernmental organizations during the decades of the digital revolution to open up their workings to the public. Whereas researchers and journalists once had to carry out their work at physical libraries serving as repositories for the documentation of the United Nations and other intergovernmental organizations, vast amounts of material may now be found on websites, including recently adopted material, which can sometimes be traced within days (and sometimes hours) of adoption. Public information officers should be congratulated for their willingness to ensure the widespread accessibility of official documents. Similarly, there are examples of organizations and agencies opening up files on their spending and contracting to public scrutiny, although with varying degrees of success.

8. And yet, despite the fact that intergovernmental organizations make much of the public work of their institutions available online, including legal instruments, resolutions, decisions of committees and monitoring bodies, field work and webcasts of public meetings, few organizations have access-to-information policies that enable the public, either on an individual basis or through the work of journalists and researchers, to make requests for information not otherwise disclosed. Organizations that do include such policies, including the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the World Bank, the World Food Programme (WFP), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and a handful of others — mostly international financial institutions and funds — are discussed in section III below. Even if they entertain such requests, most organizations make little or no effort to publicize their willingness or to highlight the standards by which decisions to disclose information are made.

B. Legal framework

1. Nature of the right of access to information

9. Before assessing what elements might constitute an appropriate freedom of information policy for intergovernmental organizations, it is worth examining the norms that apply under human rights law, for it is evident that the policies that underlie the law apply with equal force both to intergovernmental organizations and to States.

10. The right to information under international law has its roots in article 19 of the Universal Declaration of Human Rights and in article 19 of the International Covenant on Civil and Political Rights. As formulated in the International

[6] For helpful studies on freedom of information laws globally, see David Banisar, "Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws" (2006) and "The Right to Information and Privacy: Balancing Rights and Managing Conflicts" (World Bank, Washington, D.C., 2011); Toby Mendel, Freedom of Information: A Comparative Legal Study (United Nations Educational, Scientific and Cultural Organization (UNESCO), 2008); www.freedominfo.org; and United Nations Office on Drugs and Crime (UNODC), "United Nations Convention against Corruption: Resource Guide on Good Practices in the Protection of Reporting Persons" (Vienna, 2015).

Covenant, everyone enjoys the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The Human Rights Committee has provided a clear enunciation of what the right involves, emphasizing that article 19 "embraces a right of access to information held by public bodies". "Such information", the Committee noted, "includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production" (CCPR/C/GC/34, para. 18). Moreover, the Committee emphasized that the right does not merely depend on public authorities' reaction to requests for information:

> "To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests (CCPR/C/GC/34, para. 19)."

11. From the early days of the mandate's work, Special Rapporteurs have elaborated on the right to information. In only the second report of the mandate, the Special Rapporteur highlighted the "vitally important" roles served by the right to information (E/CN.4/1995/32, para. 135), and the 1998 report emphasized that "the right to access to information held by the Government must be the rule rather than the exception". The 1998 report also noted a specific right to information about "State security" and, in a notable statement, raised concerns about government prosecution of civil servants who disclose "information which has been classified", adding that Governments "continue to classify far more information than could be considered necessary". By this the Special Rapporteur meant that Governments should only withhold material in which "serious harm to the State's interest is unavoidable if the information is made public and that this harm outweighs the harm to the rights of opinion, expression and information". He concluded, "The tendency to classify or withhold information on the basis of, for example, 'Cabinet confidentiality' is too often the practice, which adversely affects access to information" (E/CN.4/1998/40, paras. 12 and 13).

12. In the years since, elaboration of the right to information has been a common thread in reporting under the mandate.[7] In 2013, the Special Rapporteur gave a full rationale for a robust right to information:

> "... public authorities act as representatives of the public, fulfilling a public good; therefore, in principle, their decisions and actions should be transparent. A culture of secrecy is acceptable only in very exceptional cases, when confidentiality may be essential for the effectiveness of their work. There is consequently a strong public interest in the disclosure of some types of information. Moreover, access to certain types of information can affect the enjoyment by individuals of other rights. In such cases, information can be withheld only in very exceptional circumstances, if at all (A/68/362, para. 20)."

[7] See E/CN.4/1999/64, E/CN.4/2000/63, E/CN.4/2003/67, E/CN.4/2005/64, A/HRC/11/4 and A/HRC/17/27.

13. In 2004, the Special Rapporteur joined with representatives of regional mechanisms for freedom of expression to emphasize the importance of freedom of information as a fundamental right. Together they emphasized that addressing the widespread "culture of secrecy" in public institutions required not only legislation and implementation but also "sanctions for those who wilfully obstruct access to information".[8]

14. In parallel with the work of the Human Rights Committee and its special procedures mechanisms, the Human Rights Council and the General Assembly also articulated the importance of freedom of information. As recently as 2016, the Council called upon all States to ensure disclosure of information held by public authorities and "to adopt transparent, clear and expedient laws and policies that provide for the effective disclosure of information held by public authorities and a general right to request and receive information, for which public access should be granted, except within narrow, proportionate, necessary and clearly defined limitations".[9] Access to information has "become a standard element of other human rights treaties (A/70/361, para. 61, and has been widely adopted in international agreements pertaining to development, the environment, food and agriculture and corruption, among other substantive areas.[10] The Aarhus Convention provides an example of international agreement that access to information, public participation in decision-making and access to justice in environmental matters, an area of major public interest, "contribute[s] to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being".[11] Similarly, in recognition of the essential role played by the right to freedom of information, Sustainable Development Goal 16 links access to information to good governance, human rights and accountability and calls on all Member States to adopt and implement public access to information laws and policies (resolution 70/1, paras. 16.6-16.10).

15. During the period of normative expansion in the establishment and work of human rights bodies, States were also adopting legislation to implement the right to information, while many incorporated a right to information as a matter of constitutional law. At the domestic level, States have increasingly opened up the workings of government as a matter of law, if not always achieving the best implementation practices.[12] Nevertheless, the environment of confidentiality and withholding that tends to prevail within bureaucracies and in political leadership around the world remains difficult to eliminate.[13] A prevailing exclusion of national

[8] Joint declaration by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Representative of the Organization for Security and Cooperation in Europe (OSCE) on freedom of the media and the Special Rapporteur of the Organization of American States on freedom of expression, 6 December 2004.

[9] See Human Rights Council resolutions 31/32, para. 13, and 34/20, para. 5 (b).

[10] See "Article 19: Defending freedom of expression and information" [independent organization], "Open Development: Access to Information and the Sustainable Development Goals", 19 July 2017, pp. 6-9.

[11] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, article 1, Aarhus, Denmark, 25 June 1998.

[12] The organization Article 19 identifies 118 countries that have adopted laws or policies to advance freedom of information held by public authorities; see "Open Development: Access to Information and the Sustainable Development Goals". In its submission, the Centre for Law and Democracy highlighted 112 national right-to-information laws, with the impressive fact that 88 per cent of them were adopted in the past 25 years.

[13] This is especially true in the context of national security. Sound rules for information disclosure may be found in *The Global Principles on National Security and the Right to Information* ("Tshwane Principles") (Open Society Foundations, 2013) available at https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf).

security information from right-to-information legal frameworks encourages a tendency to look at disclosures, even those of the highest public interest without meaningful harm to governmental interests, as contrary to "the national interest". Such attitudes put significant negative pressure on access-to-information laws, and they may have a spill-over effect beyond traditional national security environments. In short, while the legal framework for access to information has improved globally, open government still faces significant barriers in terms of overcoming attitudes and instilling implementation practices.[14]

16. Human rights law also recognizes connections between the right to freedom of expression as contained in article 19 of the International Covenant on Civil and Political Rights and other rights. The right to information is also closely connected to article 25 (1) of the International Covenant, which protects every citizen's right and opportunity to "take part in the conduct of public affairs". The Human Rights Committee has emphasized the importance of freedom of information to public participation "without censorship" (CCPR/C/21/Rev.1/Add.7, para. 25). The Office of the United Nations High Commissioner for Human Rights (OHCHR) reiterated and expanded on this point (and others) in its 2015 report on the promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law (A/HRC/30/26).

2. Narrow restrictions on the right to information

17. Recognition of the right to information, consistent with article 19 of the International Covenant, has come with the acknowledgment that access to information may be subject to limitations. Those limitations, originating in article 19 (3), must be provided by law and be necessary and proportionate in order to protect the rights or reputations of others, national security or public order or public health or morals. I have previously reviewed how the restrictions permissible under article 19 (3) apply in the context of freedom of information (A/70/361, paras. 8-13). How international organizations might translate the norms of the International Covenant for the purposes of their own access-to-information initiatives is discussed below.

3. Legal framework and international organizations

18. A subject of discussion among academics and lawyers for many years, it is often argued that human rights law, including article 19 of the International Covenant and the other instruments identified herein, does not strictly apply to intergovernmental organizations, certainly not in the same way that human rights law binds States.[15] Yet, looking at the issue purely from the perspective of organizational obligations and immunities, a legalistic approach to the human rights obligations of intergovernmental organizations misses the most salient points, both in law and in policy.

19. Transparency within intergovernmental organizations advances the same objectives that underlie the expansion of freedom of information and open government initiatives. As noted in the submission of the Centre for Law and Democracy, such organizations are public institutions, performing governmental

[14] Victoria Lemieux and Stephanie E. Trapnell, "Public Access to Information for Development: A Guide to the Effective Implementation of Right to Information Laws", *Directions in Development—Public Sector Governance* (World Bank, Washington, D.C., 2016).

[15] See, for example, Kristina Daugirdas, "How and Why International Law Binds International Organizations", vol. 57, No. 2, *Harvard International Law Journal* (2016). See also Christine Chinkin, "The United Nations Decade for the Elimination of Poverty: What Role for International Law?", *Current Legal Problems*, vol. 54, Issue 1 (2001).

functions, much as States do. Members of the public can only seriously engage with the critical issues pursued by intergovernmental organizations when they have access to information about them. In the context of multilateral institutions, the Special Rapporteur on the rights to freedom of association and peaceful assembly noted that for "civil society to engage effectively in global decision-making, the right to access information is indispensable" (A/69/365, para. 15).[16] In countries where intergovernmental organizations do extensive work, whether it involves peacekeeping or development assistance or human rights, to name a few areas, genuine engagement and participation means the ability to gain current information about the work of such missions. It means having mechanisms of public accountability so that individuals can determine whether the organizations are serving their interests or those of the organization itself, including, possibly, corporations, local leaders or corrupt participants in public life.

20. The media coverage of intergovernmental organizations is also radically different from the day-to-day or hour-to-hour reporting in domestic environments. Considering the size of the international bureaucracy, in comparison to the coverage in robust media environments of national or local governance, very few reporters cover the United Nations or other intergovernmental organizations on a dedicated basis. Those who do cover them must often work hard to get their editors, and certainly their readers, to understand the relevance of these institutions to their own lives and public policy preferences. As a result, members of the international civil service do not find themselves under the journalistic microscope in the same way that domestic bureaucrats do (or should) around the world. Such oversight may be pursued by Member States from time to time, particularly in areas of budgeting, but the difficulty of accessing information about the workings of intergovernmental organizations exacerbates the already difficult situation in terms of the pursuit of accountability at the international level. In this kind of atmosphere, every newspaper or magazine article that uncovers a problematic practice on the part of an intergovernmental organization may be taken as an attack on the institution as a whole, largely because the work of these institutions is so removed from the lives of members of the public. Fixing that, and adopting robust access-to-information policies, is one step towards better understanding, accountability, oversight and protection of the missions of intergovernmental organizations.

21. There is no principled reason why intergovernmental organizations should adopt access-to-information policies that vary from those adopted by States. While notions of "national security" and "public order" may not generally apply to intergovernmental organization for purposes of restrictions on access to information, each institution needs to identify how the restrictions applicable under human rights law apply in their particular context.[17] Some argue that, because of their nature, intergovernmental organizations need to withhold information generated or provided by Member States. But that would overreach, providing a potentially major loophole that could interfere with the development of policies that advance the public's right to know.

22. It bears re-emphasizing that article 19 of the International Covenant guarantees everyone the right to seek and receive information of all kinds,

[16] In this context, I would emphasize a point in the report of the Special Rapporteur on the rights to freedom of association and peaceful assembly (A/69/365, para. 73), namely that non-governmental organizations should be given access to participate physically — to be present — in fora of intergovernmental organizations, a key area of access to information even if not directly addressed in the present report.

[17] The United Nations serves all sorts of domestic governance roles, whether peacekeeping or transitional governance mechanisms, where security and order may be quite similar to State equities concerning disclosures.

regardless of frontiers. At a minimum, States are obligated not to stand in the way of members of the public receiving information from organizations like the United Nations and its departments and agencies, absent a demonstration of the legitimate application of the limitations found in article 19 (3) of the Covenant. One can go a step further and highlight the broad consensus that States are obligated not only to avoid illegitimate restrictions on access to information but that they should create enabling environments for all rights under article 19 of the Covenant.[18] While intergovernmental organizations clearly enjoy an independent personality under international law, their main policies and legal norms are often the result of the decisions of their Member States. As such, States should encourage the creation of environments that include access to information not merely because of some legalistic approach to intergovernmental organizations and the responsibility of the United Nations but because their citizens — all citizens, everywhere — should enjoy the right to information of all kinds regardless of frontiers, including information about intergovernmental organizations and the United Nations.

III. Key elements of an access-to-information policy

A. Access to information in intergovernmental organizations

23. Sixteen institutions made submissions for the compilation of the present report, which I supplemented with interviews and consultations.[19] Despite extensive outreach, dozens of intergovernmental organizations and agencies within the United Nations system did not respond to the mandate's call for submission. I was particularly disappointed not to receive a submission from the Secretariat of the United Nations Headquarters in New York. While organizations that did not make any submission may have some kind of access-to-information policy in place, 10 organizations that made submissions have formal access-to-information, disclosure or transparency policies;[20] two are currently drafting policies;[21] one does not have a formal access-to-information policy but provides access through an array of its policies;[22] and three do not have any information access policies.[23] Based on research, it appears that most international organizations lack binding policies to

[18] See, for example, resolution 2005/38 of the Commission on Human Rights; E/CN.4/1996/39; Human Rights Council resolution 12/16; A/HRC/17/27; A/66/290; A/68/362; A/HRC/29/32; and A/70/361.

[19] The mandate received submissions from the Food and Agriculture Organization of the United Nations (FAO), the International Finance Corporation (IFC), the International Monetary Fund (IMF), the International Maritime Organization (IMO), the International Telecommunication Union (ITU), the United Nations Mechanism for International Criminal Tribunals, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the Economic Commission for Europe (ECE), the United Nations Environment Programme (UNEP), UNESCO, the United Nations University (UNU), the Universal Postal Union (UPU), the World Food Programme (WFP), the World Intellectual Property Organization (WIPO) and the World Bank. As noted, the submissions are available at the mandate's website.

[20] The submitting organizations with formal policies at the time of the drafting of the report are: IFC (access policy), IMF (transparency policy), United Nations Mechanism for International Criminal Tribunals (access policy), UNDP (disclosure policy), UNEP (access policy), WFP (disclosure), the United Nations Population Fund (UNFPA) (disclosure policy), the United Nations Children's Fund (UNICEF) (disclosure), the World Bank (access policy) and UNESCO (access policy). A number of other international financial institutions and regional organizations also have policies but did not submit such information for this report.

[21] Organizations in the process of formulating policies, at the time of drafting, were ITU and OHCHR.

[22] WIPO has an array of policies and practices to ensure transparency and public access.

[23] IMO, ECE, UNU and UPU lack an information policy.

protect and promote the right of access to information. Put another way, based on my research, with a few notable exceptions, intergovernmental organizations have failed to create mechanisms that can penetrate their opacity and enable easy access to their operations. Most egregiously, the United Nations does not have an access-to-information policy that applies to every department and specialized agency; it does not even have ad hoc standards for response to access-to-information requests.

24. Dynamic and flexible access to information policies are feasible, as demonstrated by the policies adopted by several organizations. Finance, environment and development institutions tend to have active approaches to information, responsive to the demands of governmental and non-governmental stakeholders that their work be transparent and open to genuine scrutiny.

25. The World Bank, the International Finance Corporation (IFC) and the International Monetary Fund (IMF) have active institutional websites, training guides and designated access-to-information departments that oversee annual reporting and information disclosure. In its submission, the Center for Law and Democracy stated that the prevalence of access-to-information policies in the international finance sector "is largely due to heightened civil society scrutiny of their work, given its high impact, and also partly due to the fact that Member States are keen to ensure that their money is being handled appropriately". There is also focused attention on the part of civil society, to such an extent that the Global Transparency Initiative, an informal network of civil society organizations promoting openness at financial institutions, has created a charter elaborating the standards upon which the access-to-information policies of international financial institutions should be based. This rights-based approach to establishing an access-to-information policy includes a presumption of disclosure, generous automatic disclosure rules, a clear framework for processing requests for information, limited (though still often overbroad) exceptions and a right to appeal refusals to disclose information to an independent body.[24] Many financial institutions have access-to-information policies that embody a significant number of the elements of the charter advanced by the Global Transparency Initiative. For example, the World Bank's policy includes guiding principles upholding maximum access to information, a list of exceptions, a set of procedures describing how information is made available and a two-stage appeals mechanism. Under the appeals mechanism, the requester enjoys recourse to an appeals board, consisting of external and independent outside experts. Its disclosure policy includes a declassification system timeline and a set of definitions. The World Bank has also instituted an "access to information committee", which is responsible for overseeing the implementation of the policy.

26. Access information policy at UNEP is focused on a policy of maximum disclosure and openness. Its policy defines the type of information it can disclose, which is any information relating to UNEP and in its possession, and includes established exceptions, consistent with relevant rules and practices of the United Nations, for example, how to handle sensitive information and classification. UNEP has a specific information request mechanism that includes information on how to frame a request, and to whom. Furthermore, it specifies that if there is an exception of concern, the officer handling the request shall seek guidance from a senior legal officer. UNEP has a timeline for handling requests, indicating that receipt of a request must be acknowledged within 5 days, a response within 30 days, and a response to an information appeal within 60 days. The policy contains a fee structure, under which most information is released free of charge, except for printing costs. It requires a reason for the denial of a request for information and

[24] Global Transparency Initiative, Transparency Charter for International Financial Institutions: Claiming our Right to Know, available at: http://www.ifitransparency.org/doc/charter_en.pdf.

establishes an appeals mechanism, made up of a panel of two members of UNEP and one outside representative. In addition, the policy includes a public interest override test according to which UNEP will release information if the benefits of disclosure outweigh potential harm.

27. One of the earliest access-to-information policies was established by UNDP, which operates on a presumption in favour of disclosure. It defines what type of information it discloses and where the policy applies. A notable feature of this policy is that it provides a link to publicly available information to help requesters determine what type of information they might need to request. Like many intergovernmental organizations, UNDP has a list of exceptions to disclosure. Like UNEP, it has a harm test and a public interest override, under which an independent Information Disclosure Oversight Panel determines whether certain types of information should be disclosed because such disclosure would serve a public benefit. UNDP has specific request times: 30 calendar days for information requests; and 30 calendar days for appeals. It includes not only an annex of information that describes exceptions and the information normally made available to the public but it also a flowchart as a visual aid to describe the information-request process.

28. After reviewing domestic access to information policies and existing policies adopted by these and other institutions, as well as consulting with stakeholders and examining the related work of the previous Special Rapporteur, I have identified practices that intergovernmental organizations should include as part of their access to information policies.

29. Apart from the organizations mentioned above, most intergovernmental organizations operate on an ad hoc, case-by-case basis; different departments authorize or withhold disclosure in the absence of standards.

B. Essential elements of access-to-information policies

1. Open multi-stakeholder adoption process

30. Among the principles set out in the International Covenant on Civil and Political Rights, article 19 (3) states that all restrictions on the right to access information must be provided by law. In the context of States, this is understood to require adoption of restrictions through regular legislative processes with clear rules to avoid excessive restrictions on access to information on the part of decision-makers or undue restrictions on public engagement (CCPR/C/GC/34, para. 46). Intergovernmental organizations should ensure that stakeholders, including members of the public and civil society organizations, have the ability to participate meaningfully in the development, review and updating of access policies. Several organizations have undertaken to involve stakeholders when developing policies. For example, UNEP publicized drafts of its interim policy and revised policy, posting them on its website for two months for input and comments from member States, observers and the general public. The organization also held formal hearings discussing the policy, which was live streamed to allow for public participation. The IFC policy evolved in three phases, involving the public and various external stakeholders. Throughout the process, IFC consulted various stakeholder groups, including its clients, the banking community, other financial institutions, civil society organizations, affected communities, an external advisory group, academia and think tanks, practitioners and Governments.

2. Proactive, clear, searchable and secure disclosure

31. Requests for information should be a necessary fall-back position in any access-to-information policy. At the foundation of such a policy, organizations must actively disclose information that is likely to be of relevance to the public, and they should do so on a timely basis, including consistent and usable updates, especially of websites. In this regard, OHCHR has made significant strides in the digital age, providing access to outcome documents from both charter-based (for example, the Human Rights Council and its special procedures mechanisms) and treaty-based mechanisms, webcasting of meetings of those mechanisms, regular press briefings by the spokesperson of the United Nations High Commissioner, annual reports and periodic reporting to the Council on all special procedures communications. While there are still important areas for improvement, the OHCHR public disclosures policy mirrors what other institutions are doing across the United Nations system and at other intergovernmental organizations.[25]

32. Public disclosure should also involve the following points: first, the institutions themselves should engage on a regular basis with members of the public, typically through civil society organizations, to ensure that they are making public all relevant and valuable information. For instance, in its submission for the present report, the International Service for Human Rights highlighted the kinds of information that it believes to be in the public interest and how OHCHR could improve its proactive disclosures. Regular dialogue with civil society organizations would enable all intergovernmental organizations to be efficient in the disclosure of information, and would likely reduce the resources devoted to such requests. Second, disclosed information must be shared in a way that is easily searched and analysed.[26] Third, in an age of surveillance and information insecurity, all organizations must take steps to ensure both the security of their information systems and of the individuals who may be seeking access to them. I have already raised the issue of digital insecurity at OHCHR, including in my 2015 report to the Human Rights Council (A/HRC/29/32, para. 37). The OHCHR website, and the website of the United Nations itself, remain unencrypted (as do many other institutions), potentially deterring those concerned about the privacy of their online searches from seeking information.[27]

3. Comprehensive policy with binding rules

33. Like Governments, intergovernmental organizations should establish an explicit and comprehensive legal framework that recognizes a right to information applicable throughout the entire organization and its subsidiary organs. Any access policy should, explicitly or implicitly, promote disclosure of information in the public interest — that is, information to which the public has a right of access because of the benefit it would provide to understanding of the work of the organization. Information should be defined broadly to include all records, documents, data, analyses, opinions and processes, regardless of the media in which it is held, in keeping with the principle that individuals have a right to information

[25] For examples of public-facing websites that expand access, see http://webtv.un.org/; http://www.unhcr.org/media-centre.html; http://www.who.int/mediacentre/en/; and https://www.wto.org/english/res_e/res_e.htm.

[26] See Ben Parker, "Two cheers for UN transparency", IRIN, 28 June 2017, available at https://www.irinnews.org/analysis/2017/06/28/two-cheers-un-transparency.

[27] Not all organizations remain so insecure: the International Atomic Energy Agency (IAEA), UNICEF and the World Trade Organization, for instance, use "https" encryption technology to secure their websites, although most organizations mentioned herein do not.

and ideas of all kinds, subject only to narrow non-disclosure rules.[28] The policy should be uniform across the organization, and should be written in plain language. It should also be binding, precluding the organization from withholding information on any basis found outside the policy itself. For instance, WFP generally recognizes a wide range of categories of information, capturing all sorts of media, and emphasizes the policy as a "directive" to be carried out by senior management.[29]

34. Two categories of information deserve specific mention so as to clarify exactly how access to information advances the public's right to participation. First, while most organizations seek to exclude "internal documents", they should in fact be providing access to all information that enables the public to understand the bases for decisions.[30] The Aarhus Convention, for instance, defines "environmental information" as including "cost-benefit and other economic analyses and assumptions used in environmental decision-making".[31] Organizations should include the "analyses and assumptions" that underlie their decisions within the definition of information that may be disclosed, including not just economic but also legal, political, institutional, operational and similar kinds of analyses and assumptions. Most intergovernmental organizations are not in favour of such disclosures,[32] but non-disclosure of important process documentation hinders public understanding of their work. At the very least, it should be presumed that such information is subject to disclosure.

35. Second, information about the selection and election process for all categories of committees and monitoring bodies, whether involving Member States, experts or others, should be subject to disclosure. Generally, intergovernmental organizations should be making greater efforts to disclose specific kinds of governance decision-making. For instance, one of the most basic public functions of organizations, elections, whether of State delegations to serve on committees or individuals to serve in expert roles such as special rapporteurs, remain largely closed to public scrutiny. Organizations should devote clearly identifiable space on their websites for information about candidates to elective or selective positions, and they should provide information about State compliance with the organization's norms in the context of elections to bodies held by State delegations. Those making appointments or selections to expert bodies should make public the reasons for their choices.[33] Timely and interactive access to such processes would enhance their credibility as well as the accountability of those making the selections. As noted below, some

[28] In practice, most national laws define the scope of information broadly and intergovernmental organizations should as well. See, for example, Antigua and Barbuda's Freedom of Information Act 2004, article 4(1), which states: "For purposes of this Act, a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority or private body that holds it and whether or not it is classified." http://www.laws.gov.ag/acts/2004/a2004-19.pdf.

[29] WFP, Directive CP2010/01 on Communications, Public Policy and Private Partnerships Division Directive (7 June 2010).

[30] The Tshwane Principles provide a good illustration of the kinds of information that should be disclosed: "records, correspondence, facts, opinion, advice, memoranda, data, statistics, books, drawings, plans, maps, diagrams, photographs, audio or visual records, documents, e-mails, logbooks, samples, models, and data held in any electronic form".

[31] Aarhus Convention, article 2, para. (3) (b).

[32] See, for example, UNDP, Information disclosure policy, annex 2, para. 11 (c), available at: http://www.undp.org/content/undp/en/home/operations/transparency/information_disclosurepolicy.html.

[33] See, for example, the report of the Consultative Group to the President of the Human Rights Council relating to the vacancies of special procedure mandate holders to be appointed at the thirty-fifth session of the Human Rights Council (12 May 2017). Also see Designaciones Publicas' chart on appointments of the multilateral organs of the United Nations: http://designaciones.org/multilaterales/#!/en/comites.

kinds of information may be subject to non-disclosure, for instance, if necessary to protect the personal data of individual candidates for positions. Generally, however, there is legitimate dissatisfaction among civil society organizations about their limited ability to learn about such processes as they are happening. In turn, the lack of information leads to misunderstandings about the nature of elective or appointment processes.

36. Organizations should also avoid limiting who may make requests for information. Just as article 19 of the International Covenant guarantees everyone's access to information, without limiting or defining "everyone", intergovernmental organizations should be open to requests regardless of the requester, without regard to concepts such as "standing" or "harm" to demonstrate a reason for the request. A person or entity making a request should not be required to provide a justification for it. In order to demonstrate that everyone should enjoy such access, policies should keep costs to the absolute minimum, eliminating fees to the greatest extent possible.

4. Clear rules about what information may be withheld

37. States may impose restrictions on access to information held by public authorities only when they meet the three-part test, of legality, necessity and proportionality, and also legitimate objective. The general limitations on access to information applicable to States should also apply to intergovernmental organizations. The requirement of legality ("provided by law") requires that regular procedures be followed in the adoption of restrictions and that there be clarity and specificity in the rules. They must not be drafted so generically that they provide unfettered discretion on the power of the decision makers to refuse disclosure of information (CCPR/C/GC/34, para. 25). Similarly, the requirement of necessity, which implies proportionality, means that the policies of intergovernmental organizations should permit non-disclosure only when disclosure would indeed cause likely harm to a legitimate interest (CCPR/C/GC/34, para. 38).

38. The legitimate subjects of restriction for States, to protect the rights or the reputation of others, national security or public order or public health or morals, may also serve as a basis for restrictions on the part of intergovernmental organizations. The rights of others, for instance, would counsel for the creation of protections to ensure that disclosures do not interfere with the privacy rights of individuals employed by or in some way connected to the intergovernmental organization. Public order may be an especially salient basis for sensitivity with regard to disclosure in the context of peacekeeping, while national security could be a basis, for example: the International Atomic Energy Agency (IAEA) might choose not to disclose certain information about nuclear inspections; or the World Health Organization (WHO) could cite public health concerns as a basis for withholding sensitive information. Even for these generic bases for non-disclosure, the organization would still need to demonstrate necessity and proportionality in a given case.

39. The policies of intergovernmental organizations must clarify what kinds of information may not be disclosed; in their actual withholding of information, they should be held to a high standard in identifying their reasons. At a minimum, intergovernmental organizations should specify what kinds of information they consider to be sensitive and subject to non-disclosure. In doing so, they should not overstate what is subject to non-disclosure but adhere strictly to notions of public interest.

40. The UNDP information disclosure policy provides a good example of how to approach exceptions. Its policy, which notes that the organization operates in

contexts of "crisis, conflict or humanitarian disasters" that pose challenges to UNDP operations and Member State interests, identifies several categories of information deemed confidential and "not available to the public". Not all of the categories of exceptions are entirely appropriate, such as "[c]ommercial information where disclosure would harm either the financial interests of UNDP or those of third parties involved" or "[i]nformation which, if disclosed, in UNDP's view would seriously undermine the policy dialogue with Member States or implementing partners". (These exceptions are found in the policies of other intergovernmental organizations as well.) Both categories seem overbroad and subject to undue discretion of the organization. Nonetheless, recognizing this potential for overbreadth and potentially illegitimate non-disclosure in paragraph 12 of its information disclosure policy, UNDP provides that it could disclose even "confidential" information "if it determines that the overall benefits and public interest of such disclosure outweighs the likely harm to the interest(s) protected by the exception(s)". Such authority rests not only in UNDP itself but in the independent panel created to oversee such decisions.

41. Not every organization with an access-to-information policy deals with exceptions in the same way, but a fundamental problem with many is that they do not provide a basis for disclosure in the public interest (which UNDP does provide). For instance, while the policy of the United Nations Population Fund (UNFPA) largely follows along the lines of UNDP,[34] it fails to include a public interest test to provide for disclosure, even in situations where non-disclosure may be permitted. UNESCO has recently adopted a policy that, while noting a commitment to transparency (and despite its role in the United Nations system in promoting access to information), includes similar restrictions as UNDP.[35] However, like UNFPA, it does not provide a public interest override, such that material normally subject to non-disclosure could be released. If an organization does not provide a public interest test, its exceptions appear rigid and likely to result in barriers to transparency. As part of any public interest test, organizations should include a strong presumption that information about threats to the environment, health or human rights and information revealing corruption should be released because of heightened public interest in such information. This would be consistent with emerging norms governing State access to information policies.

5. Complaint and appeals mechanisms

42. Although they vary in structure, all national right-to-information laws provide an appeals mechanism in the event of non-disclosure.[36] Intergovernmental organizations should also ensure an independent appeals process, protected against political interference and with the competence to make binding decisions. Grounds for appeal should be broad and clear procedures should be in place, including timelines.

43. UNDP provides a useful model. Upon a non-disclosure response from its Legal Office, a person making a request may ask for a review of the determination by the Information Disclosure Oversight Panel. According to paragraph 21 of the UNDP information disclosure policy, the Panel consists of four members, all appointed by the UNDP Administrator with input from the Bureaux, including one from the UNDP Office of Audit and Investigations; one from the UNDP Ethics Office; one from a United Nations agency other than UNDP; and one from a

[34] UNFPA, Information Disclosure Policy, available at: http://www.unfpa.org/information-disclosure-policy.

[35] UNESCO Access to Information Policy, available at: http://en.unesco.org/this-site/access-to-information-policy.

[36] See Global Right to Information Rating (http://www.rti-rating.org/by-indicator/?indicator=36).

non-governmental organization. The Panel reviews the denial of requests to disclose a document or portion of a document to a member of the public, and provides a final recommendation within 30 calendar days of receipt of the appeal. The Panel shares its recommendation with the UNDP Administrator and the relevant internal unit or office. The Administrator has the authority to make the final decision, taking into consideration the recommendations of the Panel. If the Administrator determines that the requested information will not be disclosed, the reasoning is provided.

44. While the UNDP process involves strong elements of review, in general the decision-making authority should be lodged in an independent actor, not in the Administrator.[37] Such a rule is reflected in most international standards and can be seen in domestic freedom of information laws.[38] An independent body, such as an ombudsperson or commissioner, should be established to guarantee the right to information outside the chain of the organization's normal authority.

6. Implementation, review and monitoring

45. Intergovernmental organizations, like many (if not all) bureaucratic institutions, prize some measure of secrecy and the ability to work outside the public eye. In order to chip away at the secrecy embedded in large institutions, implementation must continue throughout the life of an access policy, including through education of the staff and leadership. The World Bank has developed a staff handbook, a mandatory training programme, workflow automation and records management systems, including dedicated websites, to provide easy access to documents (including an online portal for users to submit requests for information).[39] Such internal programming is necessary to ensure that access to information becomes a part of organizational culture, understood as the responsibility of a public institution rather than an interference with its work.

46. Some Governments ensure oversight through annual reports that review the status of their freedom of information regime. The World Bank has followed suit by publishing annual freedom of information reports. In the spirit of such disclosure, intergovernmental organizations should consider posting the responses to requests on their websites so that all subsequent requesters have access to that information.[40] Annual reports that provide statistics regarding the implementation of their access-to-information policies, and their consistency with article 19 of the International

[37] See also IFC, Access to Information Policy (1 Jan. 2012), available at: http://www.ifc.org/wps/wcm/connect/98d8ac0049979361f9b7bffb2b4b33c15/IFCPolicyDisclosureInformation.pdf?MOD=AJPERES.

[38] An estimated 70 Governments grant requests for the right to bring an external appeal with an independent administrative oversight body. See Centre for Law and Democracy, "RTI Rating Data Analysis Series: Overview of Results and Trends (2013)", available at: http://www.law-democracy.org/live/wp-content/uploads/2013/09/Report-1.13.09-Overview-of-RTI-Rating.pdf. See also, Aarhus Convention, article 9; Council of Europe, Committee of Ministers, recommendation Rec(2002)2 to member States on access to official documents, 21 February 2002; African Union, draft model law for African Union States on access to information; and Organization of American States, model inter-American law on access to information.

[39] See World Bank, Access to information: annual report and five-year retrospective (2015), available at: http://documents.worldbank.org/curated/en/836081467999089075/Access-to-information-annual-report-FY-2015-and-five-year-retrospective.

[40] Open Society Justice Initiative, "Transparency & Silence: A Survey of Access to Information Laws and Practices in 14 Countries" (2006), available at: https://www.opensocietyfoundations.org/sites/default/files/transparency_20060928.pdf

Covenant, ensure the proper review of existing policies.[41] For example, IFC monitors its own policy and issues periodic reports on its implementation. This helps show the tangible effects its policy has on increasing transparency and access to information. It also discloses monthly summaries of requests for the public to view and monitor and discloses how many appeals were filed before the Appeals Board.

47. Access-to-information policies should be subject to regular review and take into account the changes in the nature of information held, including a formal requirement that they be subject to comprehensive review on a regular basis. This allows an opportunity to assess how well the implementation process is and whether there is room for improvement. Moreover, it provides an opportunity to amend the policy to provide for greater information disclosure and to align it with international best practices. These reviews should be conducted in a fully transparent manner and include multi-stakeholder consultation to get feedback from a broad range of stakeholders. Particular attention should be paid to whether categories of information need to be changed. Intergovernmental organizations need to reflect the changing demands of the public and should operate on policies that best suit these demands.

7. Independent whistle-blower protections

48. Two years ago, in my annual report to the General Assembly (A/70/361), I provided an assessment of how international human rights law protects sources of information and whistle-blowers. That report sought to clarify the norms promoting and protecting whistle-blowing, specifically because of the access to information that such rules seek to guarantee, particularly information in the public interest such as, inter alia, waste, fraud, abuse, illegality, human rights violations, war crimes or crimes against humanity. The points highlighted in that report apply in the context of this report as well. Indeed, the 2015 report emphasized the importance of whistle-blower protections in intergovernmental organizations and encouraged the development of policies that would define whistle-blowing broadly to cover all sorts of otherwise unauthorized disclosures, the reinforcement of the independence and effectiveness of whistle-blowing mechanisms, the adoption of strong transparency and access-to-information processes and protection against retaliation.

49. Whistle-blower protections remain an issue of the highest importance, something the Secretary-General acknowledged when, in one of his first steps, he promulgated a revised policy on the protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations (ST/SGB/2017/2). The policy aims to strengthen the protections of whistle-blowers, including by enhancing protection for individuals who report misconduct to external actors under specified conditions. I do not intend here to provide a detailed evaluation of the new policy but rather to emphasize the following considerations to ensure that the policy, over the long term, effectively promotes and protects whistle-blowers.

50. First, and perhaps most seriously, the new policy does not provide for sanctions against those who retaliate against whistle-blowers. Notably, the policy provides consequences that could favour the person claiming retaliation, such as

[41] For example, Ecuador, Honduras, Portugal, Thailand, Switzerland, and the United States have an information commission or government department that presents a consolidated report to the legislature on the implementation of Freedom of Information laws. See Centre for Law and Democracy, "RTI Rating Data Analysis Series: Overview of Results and Trends (2013)", available at: http://www.law-democracy.org/live/wp-content/uploads/2013/09/Report-1.13.09.Overview-of-RTI-Rating.pdf.

rescission of the decision, reinstatement, or transfer (ST/SGB/2017/2, para. 8.5). Nonetheless, it does not provide for the imposition of any penalty on the staff or leadership responsible for the retaliatory action. Until the policy provides for such penalties, the protective framework will be weak.

51. Second, the Ethics Office remains central to the whistle-blowing policy. The creation of the Ethics Office in 2006 gave United Nations staff an important mechanism to ask questions and seek advice concerning the ethical conduct of one's work — but it is not the appropriate place for a whistle-blower protection mandate. Importantly, it does not have a mandate to advocate on behalf of staff, nor is it necessarily expert in the global norms protecting and promoting whistle-blowing. Alternatively, an independent whistle-blower office would advise would-be whistle-blowers, evaluate complaints and provide strong protections against retaliation. Over time, an office that sees its sole duty as advocating whistle-blower protections and responding to retaliation would provide staff with a sense of security by ensuring that their reports are to be managed by an office dedicated to accountability. It should have standards that reflect international norms and focus not on the image of the institution but on the importance of disclosing wrongdoing.

52. On this latter point, I note that the Ethics Office relies in part on the 2013 International Civil Service Commission's standards of conduct for the international civil service, which, while generally valuable, provide that: "It would not be proper for international civil servants to air personal grievances or criticize their organizations in public. International civil servants should endeavour at all times to promote a positive image of the international civil service, in conformity with their oath of loyalty".[42] This standard, and the tone it sets, counteracts the notion that staff should report misconduct that may, in some serious cases, fail to promote a positive organizational image.

53. Third, the United Nations whistle-blower policy provides that: "The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct has occurred" (ST/SGB/2017/2, para. 2.1 (a)). In the context of whistle-blowing, a "good faith" requirement should not require justification other than the fact that the whistle-blower aims to disclose waste, fraud, abuse or some other illegal conduct. It should not be understood to require or permit any kind of inquiry into other motives that the whistle-blower may have.

54. Fourth, the policy could be clearer about the channels that would-be whistle-blowers should and may use to report wrongdoing without fear of reprisal or to report actual cases of retaliation. The strength of the policy is clouded somewhat by its legalism; the United Nations should be undertaking significant outreach to ensure that all staff understand the appropriate channels.

IV. Conclusions and recommendations

55. **Over the past 70 years, the United Nations and other intergovernmental organizations have served foundational roles in expanding the rule of law globally. While not always successful, these organizations enable the coordination of policy and the development of legal norms in the fields of security, development, governance and many others, and they are consistently perceived as important institutions by public opinion around the world. Strengthening them, ensuring that they serve the functions for which they were created, enhancing public participation in their work, these are the underlying**

[42] A/67/30 and Corr.1, annex IV, para. 37.

goals of the present report. Development of access-to-information policies, in keeping with the global legal trends for freedom of information, will advance the objectives of intergovernmental organizations and the Member States that constitute them.

56. International organizations must open themselves up to greater public scrutiny and participation if they are to thrive. Their leaders seem to recognize this, as is evident in their extensive websites, professional (if underresourced) communications offices and the public presence of a great number of officials of intergovernmental organizations in social, broadcast and print media. However, apart from a handful of exceptions noted herein, this recognition on their part does not generally lead to policies that promote and regularize the exercise of the right to information. Why this is so is not difficult to understand: with perhaps the exception of the work of the Security Council and the Secretary-General, and high-level ministerial meetings of Heads of State and Government, intergovernmental organizations generally conduct their day-to-day operations far from the media's gaze, a situation that changes only in the event of scandal or abuse. The absence of that gaze, and the haze generated by large and difficult to penetrate bureaucracies, means that officials generally do not feel the pressure to release information. This, however, is a mistake.

57. Intergovernmental organizations should make efforts now to create openness and to establish policies and infrastructure that not only provide information of all kinds but also promote such requests. Intergovernmental organizations should welcome the opportunities to provide transparency because, although transparency can cause embarrassment and, occasionally, give rise to scandal, it also sends a broader message of understanding that public knowledge is critical, especially so since these institutions serve critical public functions. Opacity, by contrast, sends the opposite message: we are distant; our work does not concern you; your support is unnecessary.

58. It is not enough simply to adopt access to information policies, such policies must be rigorous and principled, drawing on the broad global acceptance that the right of access to information held by public authorities is rooted in international law. I encourage international organizations and the United Nations to align their policies with those being adopted and implemented, increasingly, by States, not only to emulate the best aspects of governmental behaviour, but to serve as a model for States to follow.

59. I make the following core recommendations in keeping with the findings of the present report.

60. International organizations, especially the United Nations, should:

(a) Begin the process of adopting rigorous access-to-information policies. At a minimum, organizations should identify and appoint access-to-information focal points to coordinate the adoption process. I specifically encourage the Secretary-General to appoint the director of the Department of Public Information to lead such an effort on an urgent basis;

(b) Develop a multi-stakeholder process to engage civil society, including the media, and Member States in identifying the key elements of an access policy;

(c) Consult with those organizations that already have active access-to-information policies, such as UNEP and UNDP, to understand their processes and any lessons learned they may impart;

(d) Ensure that policies include the main elements identified above, in particular, proactive, clear, searchable and secure disclosures; comprehensive policies with binding rules; clear rules about what information may be withheld; effective complaint and appeals mechanisms; strong implementation, review and monitoring systems; and independent whistle-blowing protections.

61. The political bodies of the United Nations, especially the General Assembly and Human Rights Council, and other intergovernmental organizations should:

(a) Promote the adoption of access to information policies through resolutions and other governance mechanisms;

(b) Ensure the development of monitoring and oversight functions;

(c) Provide comprehensive information concerning organizational governance mechanisms, including election and selection or appointment processes, and broader and simpler accreditation of organizations to participate in and monitor organizational activities;

(d) Promote knowledge of access to information policies, including through the provision of clear information on websites and active dissemination and promotion of those policies to staff and stakeholders.

62. Member States should:

(a) Encourage intergovernmental organizations to adopt access-to-information policies that meet the standards identified in the present report;

(b) Participate actively in the development of policies that advance everyone's right to freedom of information;

(c) Focus on ensuring the broadest possible access to information, only seeking to protect from disclosure State-generated information that could be withheld under international human rights law, in particular article 19 (3) of the International Covenant on Civil and Political Rights.

63. Civil society organizations, the media and members of the public should:

(a) Engage directly and seek a formal role with intergovernmental organizations in the process of development of access to information policies, including by identifying for them the key areas of interest in information;

(b) Make requests for information from intergovernmental organizations as soon as possible, even before the development of access policies, in order to determine the way in which they currently handle such formal requests;

(c) Share information with other organizations and with the Special Rapporteur about the experience of engaging with intergovernmental organizations in the development of access policies.